



December 12, 2000

Ms. Sara Shiplet Waitt
Senior Associate Commissioner
Legal and Compliance Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2000-4675

Dear Ms. Waitt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 142093.

The Texas Department of Insurance (the “department”) received a written request for records pertaining to certain consumer complaints against American Pioneer Life Insurance Company. You state that the department has released most of the requested information to the requestor. You contend, however, that certain information contained in the requested records is excepted from required public disclosure pursuant to section 552.101 of the Government Code. You have submitted to this office for review a representative sample of the records at issue.¹

Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information coming within the common law right to privacy. *Industrial Found. v. Texas Indus. Accident*

¹In reaching our conclusion here, we assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Bd., 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. This office has found that an individual's personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Much of the information you seek to withhold consists of information about individuals' personal insurance coverage. This information reveals information about individuals' personal finances and personal financial decisions. We agree that the department must withhold from the public the financial information that you have marked pursuant to section 552.101 of the Government Code.

In *Industrial Foundation*, the Texas Supreme Court also held that certain types of medical information is considered intimate and embarrassing information for purposes of common law privacy, such as information that relates to pregnancy, mental or physical abuse in the workplace, psychiatric treatment of mental disorders, and injuries to sexual organs. 540 S.W.2d at 683. This office has also determined that common law privacy protects the following information: the kinds of prescription drugs a person is taking, Open Records Decision No. 455 (1987); the results of mandatory urine testing, *id.*; illnesses, operations, and physical handicaps of applicants, *id.*; the fact that a person attempted suicide, Open Records Decision No. 422 (1984); the names of parents of victims of sudden infant death syndrome, Attorney General Opinion JM-81; and information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress. Open Records Decision No. 343 (1982). After reviewing the medical information you have marked, we agree that the medical information you seek to withhold is excepted from public disclosure under common law privacy. Accordingly, the department must withhold the medical information you have marked pursuant to section 552.101.

Section 552.101 of the Government Code also requires the department to withhold information made confidential by statutory law. Confidential medical records may only be released in accordance with the Texas Medical Practice Act (the "MPA"), title 3, subtitle B of the Occupations Code. *See* Open Records Decision No. 598 (1991). Section 159.002(b) of the MPA provides the following:

A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

We agree that the release of the documents you have designated as “medical records” is governed by the MPA. Accordingly, the department is authorized to release those records only as specified in chapter 159 of the Occupations Code.

The records at issue also contain two driver’s license numbers. Section 552.130(a)(1) of the Government Code requires the department to withhold “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state.” Accordingly, the department must withhold the Texas driver’s license numbers pursuant to section 552.130(a)(1) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).


If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kay Hastings".

Kay Hastings
Assistant Attorney General
Open Records Division

KHH/RWP/seg

Ref: ID# 142093

Encl. Submitted documents

cc: Mr. Jerry D. Bullard
Suchocki, Bullard & Cummings
550 Bailey Avenue, Suite 500
Fort Worth, Texas 76107
(w/o enclosures)